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15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 CASEY ROBERTS, Individually and On
18 Behalf Of All Other Similarly Situated

19 Plaintiff,

20 v.

21 ZUORA, INC., TIEN TZUO, and TYLER
22 SLOAT,

23 Defendants.

No. 3:19-cv-03422-SI

**NOTICE OF MOTION AND MOTION
OF THE NEW ZEALAND
METHODIST TRUST ASSOCIATION
FOR APPOINTMENT AS LEAD
PLAINTIFF, AND APPROVAL OF
THEIR SELECTION OF LEAD
COUNSEL; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: October 4, 2019
Time: 10:00 a.m.
Courtroom: 1, 17th Floor
Judge: Hon. Susan Illston

ORAL ARGUMENT REQUESTED

NOTICE OF MOTION AND MOTION**TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD**

PLEASE TAKE NOTICE that pursuant to the lead plaintiff provisions of the Private Securities Litigation Reform Act of 1995, codified as Section 27(a)(3) of the Securities Act of 1933, 15 U.S.C. § 77z-1(a)(3) (2013), and/or Section 21D(a)(3) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(3), the New Zealand Methodist Trust Association (“Movant” or “MTA”) will and hereby does move the Honorable Judge Susan Illston, United States District Court, Northern District of California, Courtroom 1, 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, on October 4, 2019, at 10:00 a.m., or as soon thereafter as the matter may be heard, for an order to appoint MTA as lead plaintiff in the above-referenced actions against Defendants Zuora, Inc., Tien Tzou, and Tyler Sloat; and approve MTA’s selection of Hagens Berman Sobol Shapiro LLP as lead counsel in the consolidated action.

Movant’s motion is based on this notice of motion and motion, the memorandum of points and authorities in support thereof, the declaration of Danielle Smith in support of this motion, the pleadings on file in this action, oral argument and such other matters as the Court may consider in hearing this motion.

The motion for appointment as Lead Plaintiff is made on the grounds that the New Zealand Methodist Trust Association believes that MTA is the most “adequate plaintiff” as defined in the Private Securities Litigation Reform Act of 1995 because MTA has the largest known financial interest in the relief sought by the Class and has incurred substantial losses as a result of their purchase and/or acquisition of shares of Zuora securities. Further, Movant satisfies the typicality and adequacy requirements of Federal Rule of Civil Procedure 23.

STATEMENT OF ISSUES TO BE DECIDED

1. Whether the Court should appoint MTA as lead plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B); and

2. Whether the Court should approve of MTA's selection of Hagens Berman Sobol Shapiro LLP ("Hagens Berman") as lead counsel for the proposed class, pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

This is a federal securities class action¹ alleging that Zuora, Inc. ("Zuora" or the "Company") and certain of its senior executives (collectively, "Defendants") violated Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b), 78t(a)), and U.S. Securities and Exchange Commission Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5). Specifically, the action alleges that from April 12, 2018 to May 30, 2019, Defendants misled investors concerning the strength of Zuora's sales strategy, the integration of the Company's key newly acquired software platform RevPro, and consumer demand for RevPro. Zuora investors, including MTA, incurred significant losses when, on May 30, 2019, Zuora slashed its fiscal 2020 revenue guidance, and admitted significant problems with the onboarding of RevPro and serious sales execution problems that slowed down the Company's ability to cross-sell its core products.

The PSLRA provides that the "most adequate plaintiff" is to serve as Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(i). Under the PSLRA, the most adequate plaintiff is the movant who has the "largest financial interest" in the relief sought by the Class in this litigation and that also makes a *prima facie* showing that the Movant is a typical and adequate class representative under Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). For the reasons set forth below, MTA is the "most adequate plaintiff" by virtue of, among other things, the over \$700,000 in losses MTA incurred on Movant's purchases of 120,000 shares of Zuora common stock during the Class Period.

¹ See *Roberts v. Zoura, Inc. et al.*, No. 3:19-cv-03422-SI (N.D. Cal. Jun. 14, 2019), ECF No. 1 ("Roberts Compl." or the "Action").

1 In addition to asserting the largest financial interest, MTA readily satisfies the relevant
2 requirements of Rule 23 because MTA's claims are typical of those of all members of the Class and
3 MTA will fairly and adequately represent the interests of the Class. In fact, MTA is the ideal Lead
4 Plaintiff under the PSLRA because MTA is a sophisticated institutional investor with a substantial
5 financial interest in the litigation. In addition, as set forth in greater detail in their Declaration
6 submitted herewith, MTA fully understands the Lead Plaintiff's obligations to the Class under the
7 PSLRA, and is committed to fulfilling those responsibilities to guarantee zealous prosecution of this
8 action.

9 MTA has further demonstrated their adequacy through their selection of Hagens Berman as
10 Lead Counsel for the Class. Hagens Berman has an established track record of achieving substantial
11 recoveries for the benefit of investors, including within this District. Hagens Berman has extensive
12 experience in securities fraud litigation and is qualified to prosecute this action.

13 Based on MTA's financial interest in the outcome of this action, MTA's commitment to act
14 in the best interests of the Class to maximize the recovery in this case, and its ability to oversee
15 counsel, Movant respectfully requests that the Court appoint MTA Lead Plaintiff and otherwise grant
16 MTA's Motion.

17 **II. FACTUAL ALLEGATIONS**

18 Zoura is San Mateo, California-based software company. The Company focuses on
19 providing cloud-based software on a subscription basis that enables its enterprise company clients to
20 launch, manage, and transform into a subscription business. Its business consists of three
21 components: Zuora Central Platform, a subscription management hub; order-to-revenue products;
22 and an application marketplace. Its flagship products are RevPro, a revenue recognition automation
23 solution that enables customers to group transactions into revenue contracts and performance
24 obligations, and Billing, which is designed for subscription billing. Zuora acquired RevPro in May
25 2017 when it acquired Leeyo. *See* Roberts Compl. ¶ 16.

26 The Complaint alleges that during the Class Period, Defendants misrepresented the strength
27 of Zuora's sales strategy, as well as the onboarding of and customer demand for RevPro. *See*
28

Roberts Compl. ¶ 5. Unbeknownst to investors, Zuora lacked adequate resources to integrate RevPro with its core business and that the delays in integrating RevPro was causing sales execution problems.

On May 30, 2019, the market learned the truth when, in connection with its first quarter 2020 financial results, the Company announced that it was lowering its fiscal 2020 revenue guidance to a range of \$268 million to \$278 million, from prior guidance of \$289 million to \$293.5 million. In addition, the Company reported that 1) the product integration for Billing and RevPro was “taking longer than expected”, 2) that “the technical work to complete the integration is taking time as these are complex mission-critical systems,” 3) that as a result of the product integration delay, the Company slowed down RevPro implementations, and 4) that sales execution problems slowed down its ability to cross-sell its products, and therefore “resulted in lower professional services and subscription revenue in the quarter.” As a result of these disclosures, the price of Zuora common shares declined nearly 30% on unusually high trading volume.

III. ARGUMENT

A. MTA Is The Most Adequate Plaintiff.

MTA should be appointed Lead Plaintiff because MTA is the movant “most capable of adequately representing the interests of class members.” 15 U.S.C. § 78u-4(a)(3)(B)(i). The PSLRA governs the procedure for selecting the Lead Plaintiff in class actions arising under the federal securities laws and provides a presumption in favor of the movant that has the “largest financial interest” in the relief sought by the Class and satisfies the relevant requirements of Rule 23. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb); *see also In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (“The [PSLRA] provides a simple . . . process for identifying the lead plaintiff pursuant to these criteria.”). As set forth below, MTA is the “most adequate plaintiff” and is entitled to be appointed as Lead Plaintiff.

1. MTA’s Motion Is Timely

Under the PSLRA, any Class member may move for appointment as Lead Plaintiff within 60 days of the publication of notice that the first action asserting substantially the same claims has been

1 filed. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i)(II). Here, notice of pendency was published on
 2 *BusinessWire* on June 14, 2019, thereby establishing the deadline to move for appointment of lead
 3 plaintiff on or before August 13, 2019. *See* Declaration of Danielle Smith In Support of Motion of
 4 the New Zealand Methodist Trust Association for Appointment as Lead Plaintiff, and Approval of
 5 Selection of Lead Counsel (“Smith Decl.”), Exhibit (“Ex.”) A. Accordingly, MTA has timely moved
 6 for appointment as Lead Plaintiff through the filing of this Motion.

7 **2. MTA Has the Largest Financial Interest in the Relief Sought by the Class**
 8 **And Is Therefore Presumptively the Most Adequate Plaintiff.**

9 MTA is entitled to be appointed Lead Plaintiff because it has the largest financial interest in
 10 the relief sought by the Class. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb). MTA incurred losses of
 11 over \$700,000 as calculated on a last-in, first-out (“LIFO”) or first-in, first-out (“FIFO”) basis, on its
 12 Class Period purchases of 120,000 shares of Zuora common stock and expenditure of over \$2.5
 13 million. *See* Smith Decl., Ex. C. To the best of MTA’s knowledge, there is no other applicant
 14 seeking Lead Plaintiff appointment that has a larger financial interest in this litigation. Accordingly,
 15 MTA has the largest known financial interest in this class action.

16 **3. MTA Satisfies the Requirements of Federal Rule of Civil Procedure 23.**

17 In addition to possessing the largest financial interest in the outcome of the litigation, MTA
 18 satisfies the requirements of rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(cc). On a motion to
 19 serve as Lead Plaintiff, courts focus only on the typicality and adequacy requirements of Rule 23. *In*
 20 *re Cavanaugh*, 306 F.3d at 732 (“Once it determines which plaintiff has the biggest stake, the court
 21 must appoint that plaintiff as lead, unless it finds that he does not satisfy the typicality or adequacy
 22 requirements.”); *see also In re Century Aluminum Co. Sec. Litig.*, No. C 09-1001 SI, 2009 U.S. Dist.
 23 LEXIS 81205, at *14 (N.D. Cal. Sept. 8, 2009) (*citing Cavanaugh*, 306 F.3d at 730) (“Thus, if [the
 24 movant with the largest loss] otherwise meets the requirements of Rule 23(a), and in particular those
 25 of “adequacy” and “typicality,” [the movant] become[s] the presumptively most adequate lead
 26 plaintiff.”).

MTA's claims are typical of the claims of other purchasers of Zuora stock. Under Rule 23(a)(3), typicality exists where "the claims . . . of the representative parties" are "typical of the claims . . . of the class." The typicality requirement of Rule 23(a)(3) is satisfied when the representative plaintiffs' claims arise from the same event or course of conduct that gives rise to claims of other class members, and when the claims are based on the same legal theory. *Id*; *see also City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Zoura Tech., Inc.*, No. 5:12-cv-06039-LHK, 2013 WL 2368059, at *4 (N.D. Cal. May 29, 2013) (finding typicality requirement met where proposed lead plaintiff "purchased [the defendant's] common stock during the Class Period, allegedly in reliance upon Defendants' purported false and misleading statements, and alleged suffered damages as a result"); *Crossen v. CV Therapeutics*, No. 3:03-cv-03709-SI, 2005 WL 1910928, at *4 (N.D. Cal. Aug. 10, 2005) (same). The requirement that the proposed class representatives' claims be typical of the claims of the class does not mean, however, that the claims must be identical. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

Here, MTA's claims and those of the Class arise from the same source of conduct and their legal arguments to prove Defendants' liability are substantially similar. As with all other classmembers, MTA: (1) purchased Zuora securities during the Class Period; (2) at prices artificially inflated by Defendants' materially false and misleading statements and omissions; and (3) were harmed when the was revealed. *See Russo v. Finisar Corp.*, No. 5:11-cv-01252-EJD, 2011 WL 5117560, at *4 (N.D. Cal. Oct. 27, 2011) (discussing ways in which a lead plaintiff movant can meet the typicality requirement). Moreover, MTA is not subject to any unique or special defenses. Thus, MTA meets the typicality requirement of Rule 23 because their claim is the same as the claims of the other Class members.

MTA similarly satisfies Rule 23's adequacy requirements. Under Rule 23(a)(4), adequate representation is satisfied if: (1) the class counsel is qualified, experienced and generally able to conduct the litigation; (2) the interests of the class are not antagonistic to one another; and (3) the lead plaintiff has a "sufficient interest in the outcome of the case to ensure vigorous advocacy." *Miller v. Ventro Corp.*, No. 4:01-cv-1287-SBA, 2001 WL 34497752, at *12 (N.D. Cal. Nov. 28,

2001) (quoting *Takeda v. Turbodyne Tech. Inc.*, 67 F. Supp. 2d 1129, 1137 (C.D. Cal. 1999)); accord *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). See also *Gen. Ret. Sys. v. Wells Fargo Mortg. Backed Sec. 2006-AR18 Tr.*, No. C 09-1376 SI, 2009 U.S. Dist. LEXIS 130360, at *32 (N.D. Cal. July 16, 2009) (“there appears to be no reason that their interests would conflict with those of the class”).

Here, MTA’s interest is clearly aligned with the members of the Class because its claim is identical to the claims of the Class who made long investments in Zuora securities. There is no evidence of antagonism between MTA’s interest and those of proposed Class members. Furthermore, MTA has a significant, compelling interest in prosecuting this action to a successful conclusion based upon the very large financial loss it incurred as a result of the wrongful conduct alleged herein. These motivations clearly show that MTA will adequately and vigorously pursue the interests of the Class. In addition, MTA has selected lead counsel that is highly experienced in prosecuting securities class actions to represent himself and the Class in this action. Hagens Berman has undertaken high-stakes complex securities, antitrust, and consumer litigation matters for several decades and pursue active litigation in California’s state and federal courts.

B. MTA Is Precisely The Type Of Lead Plaintiff Envisioned By The PSLRA

In addition to satisfying the requirements of Rule 23, MTA – a large, sophisticated institutional investor responsible for managing approximately NZ \$300 million in assets – is the type of investor Congress sought to empower to lead securities class actions through the enactment of the PSLRA. See *In re Versata, Inc., Sec. Litig.*, No. 01-cv-1439-SI, 2001 WL 34012374, at *6 (N.D. Cal. Aug. 20, 2001) (“Congress intended that the lead plaintiff procedures under the PSLRA would ‘encourage institutional investors to take a more active role in securities class action lawsuits.’”) (internal citation omitted); see also H.R. Conf. Rep. No. 104-369, at *34 (1995), reprinted in 1995 U.S.C.C.A.N. 730, 733 (explaining that “increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions”). Further, as set forth in its Declaration, MTA has demonstrated its

1 understanding and willingness to take on the Lead Plaintiff's obligations, as well as its commitment
2 to zealously and efficiently represent the interests of the Class as Lead Plaintiff.

3 **C. The Court Should Approve MTA's Choice of Lead Counsel.**

4 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject to the
5 Court's approval. 15 U.S.C. § 78u-4(a)(3)(B)(v); *accord In re Cavanaugh*, 306 F.3d at 734 n.14.
6 "[T]he district court should not reject a lead plaintiff's proposed counsel merely because it would
7 have chosen differently." *Cohen v. U.S. Dist. Ct. for Northern Dist. Of Cal.*, 586 F.3d 703, 711 (9th
8 Cir. 2009) (citation omitted). "[I]f the lead plaintiff has made a reasonable choice of counsel, the
9 district court should generally defer to that choice." *Id.* at 712 (citations omitted). Thus, this Court
10 should not disturb the lead plaintiff's choice of counsel unless necessary to protect the interests of the
11 class. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

12 MTA has selected Hagens Berman to serve as lead counsel for the Class. Hagens Berman
13 has litigated complex securities fraud actions before this Court (*In re Charles Schwab Secs. Litig.*,
14 No. 3:08-cv-1510-WHA) and has successfully prosecuted many other securities fraud class actions
15 on behalf of injured investors. Smith Decl., Ex. D. After Hagens Berman negotiated two settlements
16 resulting in an 82.1% recovery by California class members in the Schwab case, the Honorable
17 William Alsup commented, "Class counsel did a good job persistently advocating for the best
18 interests of the class members, and obtained a very good result for the class"

19 If this motion is granted, Hagens Berman will provide members of the Class with the highest
20 caliber of representation available. Accordingly, the Court should approve Movant's selection of
21 lead counsel.

22 **IV. CONCLUSION**

23 For all of the foregoing reasons, the New Zealand Methodist Trust Association respectfully
24 requests that this Court: (1) appoint Movant to serve as lead plaintiff in this action; (2) approve
25 Movant's selection of Hagens Berman as lead counsel for the Class; and (3) grant such other and
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1 further relief as the Court may deem just and proper.

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3 Dated: August 13, 2019

Respectfully submitted,

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